

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ORTIZ et al.,

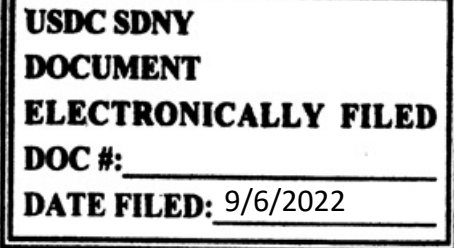
Plaintiffs,

-against-

ESKINA 214 CORP. et al.,

Defendants.
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KATHARINE H. PARKER, United States Magistrate Judge



21-CV-1537 (ALC) (KHP)

**ORDER ON MOTION TO
WITHDRAW AS COUNSEL**

On August 25, 2022 Defendants' counsel, Bart Mayol Esq., moved to withdraw as counsel of record for Defendant Ismael Garcia ("Garcia") pursuant to Local Civil Rule 1.4 due to his lack of cooperation in litigating this action and a conflict that now prevents counsel from representing all defendants. (ECF Nos. 91, 96-97.) On August 23, 2022, after a case management conference, this Court provided Defendant Garcia until September 2, 2022 to submit a letter to the Court indicating his opposition to the withdrawal. (ECF No. 89.) The Court has received no objections. For the reasons set forth below, Defendants' counsel's motion to withdraw is GRANTED.

DISCUSSION

A court in this District may grant counsel leave to withdraw "only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar . . ." S.D.N.Y. Civ. R. 1.4. This Court, therefore, must analyze two factors in determining whether to grant a motion to withdraw as counsel of record: (1) the reasons for withdrawal and (2) the impact of the withdrawal on the

timing of the proceeding. *Callaway Golf Co. v. Corporate Trade Inc.*, 2011 WL 2899192, at *2 (S.D.N.Y. July 6, 2011).

With respect to the first factor, Defendants' counsel asserts that Defendant Garcia has failed to return phone calls, correspondence, and failed to appear at his scheduled deposition. Defendant Garcia also informed counsel that he will not be opposing this request. Counsel also represents that a conflict has now surfaced concerning diverging positions of Defendants and that he now cannot represent both individual Defendants. Accordingly, the Court is satisfied that withdrawal is justified. *See Naguib v. Public Health Solutions*, 2014 WL 2002824, at *1 (E.D.N.Y. May 15, 2014) (granting motion to withdraw as counsel where client refused to communicate and cooperate with counsel).

Next, the Court must consider whether the prosecution of the action is likely to be disrupted by the withdrawal of counsel. *See Callaway Golf Co.*, 2011 WL 2899192, at *3. The Court notes that fact discovery in this case is ongoing and that there is no trial date set. In these circumstances, the proceedings are unlikely to be substantially disrupted and prejudice to Defendants is unlikely. *Blue Angel Films, Ltd. v. First Look Studios, Inc.*, 2011 WL 672245, at *2 (S.D.N.Y. Feb. 17, 2011) (finding that attorney withdrawal would not unreasonably delay proceedings as the case was not on the verge of trial); *Furlow v. City of New York*, 1993 WL 88260, at *2 (S.D.N.Y. Mar. 22, 1993) (holding that withdrawal was proper where document discovery was complete but depositions remained and the "action [was] not trial ready"). Accordingly, the Court finds that the second factor also favors withdrawal.

CONCLUSION

For the foregoing reasons, Defendants' counsel's request to withdraw as counsel for Defendant Ismael Garcia is GRANTED. Defendant Garcia shall provide the Court with his current address and promptly advise the Court of any changes in his address. **Defendant Garcia shall attend the case management conference scheduled for October 24, 2022 at 11:00 a.m., or alternatively, he may engage new counsel to attend. Please dial (866) 434-5269; access code 4858267.** Defendant Garcia is reminded that failure to participate in this action and adhere to court orders may lead to sanctions and/or default judgment.

Bart Mayol, Esq. is hereby directed to serve a copy of this Order on Defendant Garcia and shall also file proof of service of the same on ECF. Finally, the Court respectfully requests that the Clerk of Court terminate Bart Mayol Esq.'s representation of Defendant Garcia consistent with this order.

SO ORDERED.

DATED: New York, New York
 September 6, 2022



KATHARINE H. PARKER
United States Magistrate Judge